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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re: CALVIN BRUCE CHANG, Debtor.	**NO: 14-24008-A-7** **DC No.: HCS 3** **CHAPTER 7 TRUSTEE'S MOTION TO SELL PROPERTY OF THE ESTATE** **Date: April 24, 2017** **Time: 10:00 a.m.** **Place: Courtroom A**

Chapter 7 Trustee Alan S. Fukushima respectfully moves to sell the bankruptcy estate's interest in a lawsuit the Debtor filed, entitled *Calvin Chang v. Regents of the University of California*, Sacramento County Superior Court Case No. 34-2009-00033484, Third District Court of Appeal Case No. C076304. (the "Lawsuit").

STATEMENT OF FACTS

1. On April 18, 2014, the Debtor filed this case. Mr. Fukushima was appointed as Chapter 7 Trustee.

2. In his Schedule B, the Debtor disclosed the Lawsuit, describing it as an employment discrimination lawsuit that he was appealing. The Debtor's Schedule B valued the Lawsuit as "unknown" but states that if he is ultimately successful, "he expects a large award up to a million." The Debtor claimed an exemption of $12,089 in the Lawsuit under California Code of Civil Procedure Section 703.140(b)(5).

3. The Trustee's counsel obtained copies of pleadings from the Lawsuit. He learned that in the Lawsuit, the Debtor claimed he was discriminated against in his employment with the Regents of the University of California. (Suntag Decl., ¶¶ 2-3).

4. The Debtor filed the Lawsuit on February 2, 2009. He was represented in it by two attorneys, Dennis Wilson and Anthony Luti. (Suntag Decl., ¶ 4).

5. In late 2012, the Lawsuit went to trial. (Suntag Decl., ¶ 5).

6. On February 27, 2014, the Superior Court entered a judgment against the Debtor in the Lawsuit awarding attorneys' fees in the amount of $72,957.51 in favor of the Defendant in the Lawsuit. (Suntag Decl., ¶ 6).

7. On April 18, 2014, the Debtor filed a notice of appeal from the judgment. (Suntag Decl., ¶ 7).

8. The appeal is pending as Third District Court of Appeal Case No. C076304. It has not yet been briefed. (Suntag Decl., ¶ 8).

9. On August 11, 2014, the Trustee filed an application to employ Messrs. Wilson and Luti as special counsel ("Special Counsel") for the estate to prosecute the appeal of the Lawsuit. The application states the anticipated compensation for special counsel would be 33% of any net recovery in the Lawsuit (gross recovery, including any award of attorneys' fees, minus costs), whether through judgment, settlement, or otherwise and that Special Counsel would advance all costs and would be reimbursed for costs only out of any recovery they obtain in the Lawsuit. (Doc. Nos. 33-40).

10. By order issued on September 15, 2014, this Court granted the application. (Doc. No. 42).

11. The Trustee learned that the claims in the Lawsuit are encumbered by a lien in favor of the IRS in the amount of $17,544.86 (as of March 20, 2013) (see Claim No. 6-2) and a lien in favor of the FTB in the amount of $22,677.52 (as of August 7, 2012) (see Claim No. 7-1). (Suntag Decl., ¶ 9).

12. The Trustee attempted to obtain the agreement of the IRS to allow a settlement of the Lawsuit without payment of the IRS' lien on it, but the IRS declined this request. (Suntag Decl., ¶ 10).

13. The Trustee entered into discussions with the Debtor about the Debtor buying the bankruptcy estate's interest in the Lawsuit. The negotiations were protracted and lasted several months. (Suntag Decl., ¶ 11).

14. As a result of the negotiations, the estate and the Debtor reached agreement for the Debtor to buy the estate's interest in the Lawsuit for $20,000 (the "Sale Amount") and they signed a purchase and sale agreement. (Suntag Decl., ¶ 12; Ex. A).

15. The agreement states the sale is "subject to any and all liens, encumbrances, and rights to the [Lawsuit], including without limitation any and all liens, encumbrances, and interests of the IRS, FTB, and [Special] Counsel." (Suntag Decl., Ex. A, ¶ 3). The agreement also states the Debtor cannot claim any exemption in the Sale Amount.

(Suntag Decl., Ex. A, ¶ 4). The agreement expressly states it is subject to Bankruptcy Court approval and overbid. (Suntag Decl., Ex. A, ¶ 1).

16. The Debtor has delivered the Sale Amount to the Trustee by cashier's check. (Suntag Decl., ¶ 13).

17. Special Counsel have signed the agreement to confirm they will not make any claim to the Sale Amount. (Suntag Decl., Ex. A, p. 4).

THE COURT SHOULD APPROVE THE SALE

Title 11 U.S.C. Section 363(b) states that a trustee, after notice and a hearing, may sell property of the bankruptcy estate other than in the ordinary course of business.

Here, the sale of the estate's interest in the Lawsuit is in the best interests of the estate. As explained above, the judgment after trial was against the Debtor. The Debtor has appealed, but it will be difficult to obtain a reversal on appeal. Moreover, even if there is a reversal, all that likely would mean is that the Lawsuit will be remanded to the Superior Court for another trial. It could take years to prosecute the appeal, all with an uncertain outcome.

Moreover, any recovery in the Lawsuit would be subject not only to the IRS and FTB liens, but also liens in favor of Special Counsel for their fees and costs. That could be significant, especially because the Lawsuit already has been through trial. By contrast, the sale to the Debtor is subject to these liens; in other words, the sale does not contemplate that the liens would be paid from the Sale Amount, but the liens would still apply to the Lawsuit.

For these reasons, the Court should approve the proposed sale pursuant to Section 363(b).

Rule 6004(h) of the Federal Rules of Bankruptcy Procedure states an order authorizing the sale of property is stayed for 14 days after the entry of the order unless the Court orders otherwise.

Here, the Trustee requests that the Court waive the 14-day stay. It is important to the Trustee – and certainly to any prospective purchaser and the creditors – that the sale close as soon as possible. Indeed, the Debtor already has delivered the Sale Amount to the Trustee.

Thus, the Trustee believes a waiver of the 14-day stay period is appropriate.

CONCLUSION

The Trustee respectfully requests that the Court authorize the sale of the estate's interest in the Lawsuit pursuant to the agreement and this motion waive the 14 day stay of Rule 6004(h), and grant such other relief as is just and proper.

Dated: March 20, 2017

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By: *_/s/ Dana A. Suntag_*
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